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March 4, 1993

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OFFICE OF THE SECRETARY

92-259

Honorable Rick Boucher
House of Representatives
405 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Boucher:

Thank you for your comments concerning the must carry/retransmission consent provisions of the 1992 Cable Act and their possible impact on emerging cable competitors.

One of the clearly articulated underlying objectives of the 1992 Cable Act was the establishment of a more competitive marketplace for cable and video communications. In this regard, the issue has been raised by interested parties in our Docket 92-259 as to whether exclusive retransmission consent agreements should be permitted and whether such agreements are consistent with the objectives of the Act. The issues raised in your letter are thus going to be evaluated by the Commission when it issues its Report and Order in this proceeding. In order to make sure that matters you raise are fully considered, I have asked that a copy of your letter be placed in the record of Docket 92-259.

You should also be aware that there has been some controversy regarding the ability of local competitors to cable to distribute broadcast signals under the compulsory copyright licensing provision of the 1976 Copyright law. While the FCC has suggested to the Copyright Office that such carriage should be allowed, this is an area that is not within the Commission's responsibilities.

Sincerely,

James H. Quello
Chairman

02/17/93 09:06

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CONG. BOUCHER

002/003

RICK BOUCHER
9TH DISTRICT, VIRGINIA

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Congress of the United States

The Honorable James H. Quello

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the basic service tier are reasonable." In the few communities in which cable operators have faced effective competition, cable subscribers have seen their rates drop by as much as 50 percent. In order to ensure that in more than a handful of communities consumers will have the opportunity to choose between competing video programming providers, we must not permit cable operators to stifle competition by preventing their competitors from offering a local broadcasting lineup similar to that offered by cable.

Unless the Commission ensures that cable operators are not permitted to extract exclusivity or discriminatory provisions in retransmission consent agreements with local broadcasters, we will be handing cable operators a new weapon in their efforts to thwart competition. This would clearly be contrary to Congress' stated intent to increase competition and diversity in the multichannel video programming marketplace.

I would therefore suggest that the Commission ban cable operators from either securing exclusive retransmission agreements with broadcasters or including in retransmission agreements provisions that would require broadcasters to discriminate against cable competitors with respect to the price, terms, or conditions of retransmission. I believe that this ban should be in place for a period of ten years, after which time the Commission can consider whether the marketplace is sufficiently competitive that it can be eliminated.¹

In conclusion, I would urge the Commission to adopt rules, such as the ban I have proposed, to ensure that cable operators do not abuse their current monopoly power by extracting retransmission consent contracts from broadcasters that hinder the efforts of cable competitors to secure consent to retransmit local broadcast signals. If such rules are not adopted, Congress' goal of promoting cable competition will never be achieved.

With kind regards and best wishes, I remain

Sincerely,



Rick Boucher
Member of Congress

RB/mss

¹ The ten-year period I propose coincides with the similar sunset period established for the program access provision in section 19 of the 1992 Cable Act.